IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

WP(C).No. 15498 of 2007(T)

PETITIONER:

CATHOLIC SYRIAN BANK LIMITED
VAIKKOM BRANCH, VAIKKOM,
REPRESENTED BY ITS BRANCH MANAGER.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENTS:

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1. E.K.LUKE, S/O KURIAKOSE,
PAZHAYA MADATHIL, NADUVILA VILLAGE,
KIZHAKKENCHERRY, KOTTAYAM DISTRICT.

2. THE TAHSILDAR, VAIKKOM.

3. THE DISTRICT COLLECTOR, KOTTAYAM.

4. THE COMMISSIONER OF LAND REVENUE,
OFFICE OF THE COMMISSIONER OF LAND REVENUE,
TRIVANDRUM.

5. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM.

R2 TO R5 BY GOVERNMENT PLEADER SRI. BASANT BALAJI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE JUDGMENT PASSED BY THE SUB COURT, KOTTAYAM IN OS NO. 270/1997 DATED 31.7.2000

EXT.P2 TRUE COPY OF THE JUDGMENT PASSED BY THE SUB COURT, KOTTAYAM IN OS NO. 271 OF 1997 DATED 10.8.2000

EXT.P3 TRUE COPY OF THE JUDGMENT PASSED BY THIS HONOURABLE COURT IN OP 27692 OF 2001 DATED 21.11.2006

EXT.P4 TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DATED 28.4.2007

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 15498 OF 2007

Dated this the 12th day of June, 2007

JUDGMENT

W.P. is coming before this Court second round. First O.P. was disposed of vide Ext.P3 whereunder this Court directed appropriation of sale proceeds of defaulter's property in accordance with priority decided by the Tahsildar. Tahsildar pursuant to Exts.P3 issued Ext.P4 whereunder he has held that State has first charge based on Section 3 of the RR Act. It is however conceded that mortgage in favour of the Bank was executed by the defaulters on 6.11.1990 whereas the abkari dues was of the year 1993-94. Obviously, mortgaged property was accepted towards solvency by the Government. In any case since Bank has obtained mortgage three years prior to the year in which abkari arrears arose, Bank has first charge over the property. Accordingly, Ext.P4 is vacated with direction to the second respondent to pay balance sale proceeds to the Bank after appropriating collection charges and cost of recovery and other charges recoverable within two weeks from the date of production of a copy of this Judgment by the Bank. It

will be open to the Government to proceed against other properties of the defaulters and guarantors whether covered by solevency or not.

W.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge